

**R. Russell Johnson**  
465 Davis Bay Road  
Lopez Island, Washington 98261

**Date: June 26<sup>th</sup>, 2012**

**Subject Opinion: Biller vs. Westar**

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*I have been asked by Mr. Richard Wootton, legal counsel for Westar Marine Services to provide a professional opinion of the circumstances surrounding the injury to Mr. James Biller on the morning of January 4<sup>th</sup>, 2008. The Tug Terilyn was hired by the Dutra/Manson JV on January 3<sup>rd</sup> to perform "Storm Watch" duty at the Dutra dredge Liberty in San Pablo Bay. Gale force weather conditions were predicted for the evening of January 3<sup>rd</sup> and extending into January 4<sup>th</sup>. Mr. Biller was injured during the course of operations while assisting the Tug Peter M in berthing the WF-9 alongside the breasting barges which were acting as protection and buffer for the dredge Liberty.*

*In 2011 I reviewed the following documents for the Westar, Taurus Marine Exoneration From or Limitation of Liability. I recently have re-familiarized myself with some of these documents that have relevance to the Biller vs. Westar case:*

1. *Federal Rule of Civil Procedure 26*
2. *Complaint for Exoneration From or Limitation of Liability*
3. *Terilyn Crew Statements*
4. *Dutra's Incident Report*
5. *Chart of Moorings dated October 2007, Smith exhibit #5, Hartman exhibit #118*
6. *Liberty logs for 3<sup>rd</sup> and 4<sup>th</sup> January, 2008*
7. *SRRQ Buoy Permit Applications*
8. *The "Plasma 12 Strand" Specifications Sheet*
9. *Terilyn Logs for 3<sup>rd</sup>, 4<sup>th</sup>, and 8<sup>th</sup> of January, 2008*
10. *Select Photos of Pier Damage*
11. *Deposition Transcript of Mr. Rich Smith*
12. *Deposition Transcript of Captain Todd Gilbert*
13. *Deposition Transcript of Buddy Rodarte*
14. *Deposition Transcript of Captain Raymond Schneck*
15. *Expert report of Mr. John P. Monteverdi*
16. *Expert report of Mr. John Flory*
17. *Expert report of Mr. Ron Charlesworth*
18. *Expert report of Mr. Richard Nye*
19. *Expert report of Mr. Walter Paul*
20. *Expert report of Mr. Tim Parker*
21. *Expert report of Mr. Steven Pryor*
22. *Expert report of Mr. Peter McGroarty*
23. *Deposition of Mr. James Biller*
24. *Stipulation and Protective Order*

*recorded statement if there was anything that the Terilyn did to contribute to the incident, his reply was: "No." (Biller statement, page 5)*

4. *It is my opinion that the primary cause of the injury to Mr. James Biller was his inability or inattention to properly take turns on the H-bitt of the Tug Terilyn and then pulling back heavily on the line. The bitt had adequate space to put three turns on the vertical bitt. The proper method to take turns on a bitt of this type is to take a turn with both hands then pull with the right hand and pack the line down on the bitt with the left hand. This insures that each turn of line is tensioned and packed down to come in contact with the previous turn. If done in this proper manner there was adequate room for three turns. It is also my opinion that if Mr. Biller was pulling on the line in the method depicted in photo Bates stamped 000581 then he once again contributed to his injury. The photo seems to show the method that he used in the final turn was to pull backwards with both hands. If turns are taken properly and the line packed down then no substantial pulling or effort is required for the final turn. It is understandable that if he did pull back in that manner with both hands that he would lose his balance and fall if the top turn came off the bitt. Mr. Biller simply failed to exercise proper caution in those wet, slippery conditions. As he says in his own statement: Uhm slippery wet conditions, sounding boat, Uhm I....an accident, I pulled and slipped.*

*I understand that discovery may still be underway and I will be pleased to review any additional information made available to me and supplement my report accordingly.*

*Respectfully submitted,*

*Captain Russ Johnson*